

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JUAN HUNERTO PEREZ JR,

Plaintiff,

v.

USA,

Defendant.

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CIVIL ACTION NO. 5:16-CV-00037-RWS

**ORDER ADOPTING REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Movant Juan Hunerto Perez, Jr., a federal prisoner confined at the Federal Correctional Institution in Texarkana, Texas, proceeding *pro se*, brought this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge for consideration pursuant to 28 U.S.C. §636(b)(1) and (3). The Magistrate Judge has submitted a Report and Recommendation (“Report,” Docket No. 20), and no objections have been filed.

In her Report, the Magistrate Judge recommends that Perez be allowed to file an out-of-time appeal and recommending that Perez’s motion to vacate, set aside or correct sentence should be dismissed without prejudice. The Magistrate Judge also recommends that Final Judgment in *United States v. Perez*, Criminal Action No. 5:15cr12, be vacated and re-entered as of the date of entry of the Final Judgment in this proceeding.

The Court has received and considered the Report, along with the record, pleadings and all available evidence. The Court agrees with the Magistrate Judge that Movant is entitled to relief

under *Tapp* in the form of an out-of-time appeal. Accordingly, the Court **ADOPTS** the Report of the Magistrate Judge as the opinion of the Court. It is therefore

ORDERED that the above-styled Motion to Vacate, Set Aside or Correct Sentence is **DISMISSED** without prejudice. It is further

ORDERED that the Final Judgment issued in *United States v. Juan Hunerto Perez, Jr.*, Criminal Action No. 5:15cr12-1, is **VACATED** and that the Clerk of Court shall re-enter the Final Judgment as of the date of entry of the Final Judgment in this § 2255 proceeding. When the Judgment is re-entered it will begin a new time period for filing an appeal under FED. R. APP. P. 4(b).

A final judgment will be entered in this case in accordance with this Order.

SIGNED this 23rd day of August, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE